

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.104/2000

Date of order: 7/9/2000

Shiv Singh, S/o late Shri Kirori, R/o Village Golpura, Post Murbara, Distt.Bharatpur.

...Applicant.

Vs.

1. Union of India through the Secretary, Mini. of Defence, New Delhi.
2. The Major General Commanding Officer, Head Quarter, Southern Comman, O.S. 8-C Army Headquarter, Pune.
3. The Commandant, Ammunition Depot, Bharatpur.

...Respondents.

Mr.S.P.Mathur - Counsel for applicant.

Mr.Snajay Pareek) - Counsel for respondents.

Mr.P.C.Sharma)

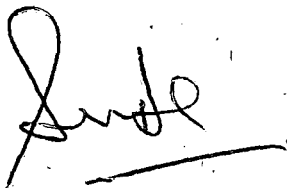
CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 19085, the applicant makes a prayer to direct the respondents to consider the candidature of the applicant for appointment on compassionate ground on the post of Mazdoor.

2. Facts of the case as stated by the applicant are that father of the applicant Shri Kirori was a permanent employee of respondent No.2 as Mazdoor and after rendering the services of about 28 years, he expired on 24.9.94. It is stated that the applicant is the eldest son of the deceased employee who submitted an application to respondent No.2 for compassionate appointment but respondent No.3 communicated to the applicant vide letter dated 27.9.96 that there is no vacancy available to grant employment to the applicant in relaxation to the normal rules. The applicant submitted fresh application and completed all the requisite formalities but the respondents again communicated vide letter dated 8.5.98 that the Headquarter, Southern Command, Pune, has not

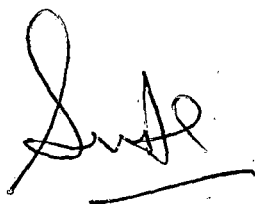


recommended the case of the applicant and directed to get his name registered with the local Employment Exchange for recruitment as and when vacancy occur. It is stated that once again the applicant submitted certain documents to respondent No.3 with reference to his letter dated 6.11.99 for further action but nothing has been done so far. Thereafter, the applicant served a legal notice dated 17.2.99 to respondent No.3 but the case of the applicant has not been considered for appointment on compassionate ground. It is stated that respondent No.2 is having 33 vacancies of Mazdoor but they are not taking any steps to consider the candidature of the applicant. Therefore, the applicant file the O.A for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that the prayer of the applicant for seeking appointment in relaxation of the normal rules as Mazdoor have been rejected vide communications dated 27.9.96 and 8.5.98 but the applicant failed to challenge the same within time. Now he has filed the O.A challenging the communication dated 6.11.99, therefore, the present O.A is barred by limitation. It is also stated that the applicant crossed the maximum age of 25 years on 24.9.94, therefore, the application of the applicant was rightly rejected<sup>and</sup> the applicant was directed to register his name with Employment Exchange under general recruitment rules. It is also stated that the case of the applicant was considered for appointment of compassionate ground but the same was rejected due to nonavailability of vacancy within 5% quota meant for such appointment. Therefore, the applicant has no case and this O.A devoid of any merit is liable to be rejected.

4. Heard the learned counsel for the parties for final disposal at the stage of admission and also perused the whole record.

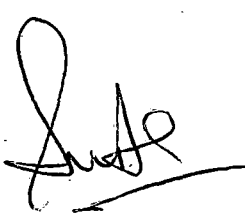
5. In Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138, a Bench of two Judges has pointed out that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis, the object is not to give a member of such family a post much less a post held by the deceased.



6. In Jagdish Prasad Vs. State of Bihar, (1996) 1 SCC 301, Hon'ble Supreme Court has observed that the very object of appointment of a dependent of the deceased employee who died in harness is to relieve unexpected immediate hardship and distress caused to the family. The Hon'ble Supreme Court also pointed out that if the claim of the dependant which was preferred long after the death of deceased employee is to be countenanced it would amount to another mode of recruitment of the dependant of the deceased Govt servant which cannot be encouraged, de hors the recruitment rules.

7. In Director of Education & Anr. Vs. UOI & Ors, (1998) 5 SCC 192, the Hon'ble Supreme Court held that the object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in pecury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment.

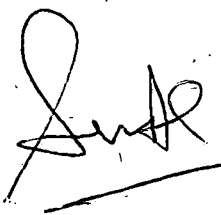
8. In Haryana State Electricity Board & Anr. Vs. Hakim Singh, JT 1997(8) SC 332, Hon'ble Supreme Court has pointed out that the rule of appointment in public services is that it should be on merits and through open invitation. It is the normal route through which one can get into public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole bread winner. It has been pointed out that such relief should not be taken as opening an alternative mode of recruitment to public employment.



9. In the instant case it appears that the prayer of the applicant was refused on the ground that due to limited number of vacancies available with the respondents, it is not possible for them to give appointment to the applicant on compassionate ground. But this ground is not sustainable in law for rejecting the candidature of the applicant. The respondents' department is required to see whether indigent circumstances exist in the family or not and if indigent circumstances exist in the family of the deceased then the department should have considered the candidature of the applicant for appointment on compassionate ground on the basis of first come first served.

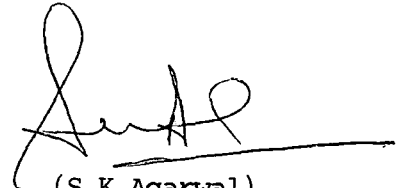
10. On a perusal of the reply it also appears that according to the policy/ guidelines dated 30.7.99, the case of the applicant has already been considered three times therefore, the case of the applicant cannot be considered at this stage again. On a perusal of the exercise done by the respondents it appears that the respondents' department has simply rejected the prayer of the applicant for providing him appointment on compassionate ground but never considered the candidature of the applicant with a view whether any indigent circumstances exist in the family or not. Moreover the guidelines issued on 31.7.99 have no retrospective effect. Therefore, in view of the settled legal position and facts and circumstances of this case, I am of the view that the case of the applicant should not have been rejected on the ground that the department has already considered his case three times.

11. The counsel for the respondents has also argued that the applicant also crossed the age limit of 25 years, therefore, he is not eligible for appointment on compassionate ground. On perusal of the whole case file, it appears that there is no delay on the part of the applicant to approach for appointment on compassionate ground. In this connection it will be worthwhile to mention that the department is competent to relax the recruitment procedure, age limit, wherever necessary. Therefore, it is just and proper to consider the case of the applicant by relaxing the age, if necessary, for appointment on compassionate ground considering whether any indigent circumstances exist for the applicant.



12. In view of above all, I allow the O.A and direct the respondents to consider the candidature of the applicant for appointment on compassionate ground within 3 months from the date of receipt of a copy of this order.

13. No order as to costs.



(S.K.Agarwal)

Member (J).